

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**MINNIE S. PIERCY**

Claimant

VS.

**WHEATRIDGE PARK CARE CENTER**

Respondent

AND

**HARTFORD ACCIDENT & INDEMNITY**

Insurance Carrier

Docket No. **256,614**

**ORDER**

Respondent requests review of an Order entered by Administrative Law Judge Pamela J. Fuller on April 23, 2001. Both parties have submitted briefs and the case has been placed on the summary docket for disposition without oral argument.

**ISSUES**

This is an appeal from the Administrative Law Judge's denial of respondent's motion to terminate medical benefits, dismiss the claim and assess respondent's attorney fees against the claimant.

The respondent states the issue on appeal in the following manner:

"Whether the Administrative Law Judge exceeded her jurisdiction by failing to follow the mandatory language of K.S.A. 44-518 and suspend claimant's medical benefits and compensation until claimant agrees to submit to an independent medical examination pursuant to K.S.A. 44-515(a)."

The claimant contends that the Board does not have jurisdiction to consider the respondent's appeal. In the alternative, the claimant contends the request for examination was unreasonable.

Before the Board can consider the merits of the Administrative Law Judge's Order, it must first determine whether or not it has jurisdiction of the matter at this juncture of the proceeding. The initial issue before the Board on this appeal, therefore, is:

Does the Board have the jurisdiction to review this interlocutory order?

### **FINDINGS OF FACT**

After a review of the file and the arguments presented by the parties to the Administrative Law Judge at the motion hearing and in their briefs to the Board, the Board makes the following findings of fact and conclusions of law:

The facts are essentially uncontroverted. Dr. Paige, an authorized treating physician, recommended claimant receive a spinal cord stimulator for pain control. It is standard practice to have the patient undergo a psychological evaluation prior to use of such device. Accordingly, Dr. Paige referred the claimant to Michael C. Pelfrey, Ph.D. for such evaluation.

Respondent then requested, pursuant to K.S.A. 44-515(a), that claimant be examined by Mitchell Woltersdorf, Ph.D. for a second psychological evaluation. Counsel for the parties then had telephone discussions and corresponded regarding this scheduled appointment with Dr. Woltersdorf. Ultimately, the claimant notified respondent that, absent an order, she would not attend the appointment.

Respondent then filed the motion to terminate medical benefits, dismiss the claim and assess attorney fees against the claimant. At the motion hearing the respondent argued that K.S.A. 44-515(a) provides that respondent may request claimant submit to an examination and K.S.A. 44-518 mandates suspension of medical benefits or dismissal of the claim for failure to submit to the medical examination. Because claimant refused to submit to the examination with Dr. Woltersdorf, respondent contends that claimant's medical benefits should be suspended and the claim dismissed.

Claimant argued that it would be a waste of time and money to submit to an examination with Dr. Woltersdorf because his reports always conclude that claimant is a malingerer. Claimant further argued that she has a back injury and Dr. Woltersdorf's opinion would be irrelevant because the claimant was not alleging any psychological impairment. Claimant contends there should be a nexus between the examination and the claimed injury. Claimant concludes that absent a claimed psychological disability the respondent's request for a psychological evaluation is unreasonable and unnecessary. Following hearing on the motion, the Administrative Law Judge entered her order denying the respondent's motion on April 23, 2001.

**CONCLUSIONS OF LAW**

The Board must first determine whether it has jurisdiction to consider this appeal from the Administrative Law Judge's April 23, 2001, Order.

Initially, it should be noted the respondent's motion sought to terminate medical treatment based upon K.S.A. 44-518 because claimant refused to submit for a medical examination pursuant to K.S.A. 44-515(a). K.A.R. 51-9-5 was promulgated to implement the provisions of K.S.A. 44-518 and provides that a hearing is required to determine whether it was unreasonable to refuse to submit to medical treatment.

Accordingly, the Administrative Law Judge had authority to conduct the motion hearing and issue a decision. The jurisdiction and authority of a court to enter upon inquiry and make a decision is not limited to deciding a case rightly but includes the power to decide it wrongly. The test of jurisdiction is not a correct decision but the right to enter upon inquiry and make a decision.<sup>1</sup>

The respondent contends the Board has jurisdiction to review the Administrative Law Judge's denial of the motion to dismiss under K.S.A. 44-534a. Respondent argues that claimant's alleged failure to cooperate with medical treatment inhibits respondent's ability to develop and present a "certain defense." In addition, respondent contends that the Board has jurisdiction pursuant to K.S.A. 44-551(b)(2)(a) which confers jurisdiction to review an Administrative Law Judge's preliminary award if the judge has exceeded the judge's jurisdiction in granting or denying the relief requested at the preliminary hearing.

Although respondent cites the preliminary hearing statute as providing jurisdiction for this appeal, the Board does not consider the Administrative Law Judge's decision to be a preliminary hearing order. The Administrative Law Judge's Order was entered following the motion hearing on respondent's Motion to Terminate Medical Benefits and Dismiss Claim. There was no E-3, Application for Preliminary Hearing, form filed. This proceeding was not pursuant to K.S.A. 44-534a but instead was brought pursuant to the provisions of K.S.A. 44-518.

The Board only has jurisdiction to review "[a]ll final orders, awards, modification of awards, or preliminary hearing awards under K.S.A. 44-534a and amendments thereto made by an administrative law judge."<sup>2</sup> The Board finds that this appeal is not from an order entered pursuant to the preliminary hearing statute.<sup>3</sup> Thus, for the Board to have

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<sup>1</sup>See *Taber v. Taber*, 213 Kan. 453, 516 P.2d 987 (1973); *Provance v. Shawnee Mission U.S.D. No. 512*, 235 Kan. 927, 683 P.2d 902 (1984).

<sup>2</sup>See K.S.A. 44-551(b)(1).

<sup>3</sup>See K.S.A. 44-534a.

jurisdiction to review the subject order, the order must be a final order, award, or modification of an award.

The Board concludes that the Administrative Law Judge's Order that denied respondent's motion to terminate medical benefits and dismiss the claim is an interlocutory order made by the Administrative Law Judge during the litigation of a workers compensation case. It is an order that the Administrative Law Judge has authority to make during the trial process, and the Board lacks jurisdiction to review such an order until it is contained in a final order or award.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Board that the respondent's appeal from the Order entered by Administrative Law Judge Pamela J. Fuller dated April 23, 2001, should be, and is hereby, dismissed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of August 2001.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c:     Lawrence M. Gurney, Wichita, Kansas  
       Richard J. Liby, Wichita, Kansas  
       Pamela J. Fuller, Administrative Law Judge  
       Philip S. Harness, Workers Compensation Director